

ARKANSAS CODE ANNOTATED

SALE OF CHECKS

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23-41-101. Title.

This chapter shall be known and may be cited as the "Sale of Checks Act".

23-41-102. Definitions.

As used in this chapter, unless the context otherwise requires:

- (1) "Commissioner" means the Securities Commissioner;
- (2) "Check" means any check, draft, money order, or other written instrument for the transmission or payment of money or credit, except that it does not mean money or currency of any nation;
- (3) "Fiscal year" means a licensee's accounting period as adopted for federal taxation purposes;
- (4) "Issuing" means the act of drawing any instrument of exchange by a person who engages in the business of drawing those instruments as a service or for a fee or other consideration;
- (5) "Licensee" means any person licensed under this chapter;
- (6) "Money order" means a bill of exchange issued at the request, and for the use or benefit, of a person other than the issuer and representing an unconditional order or obligation in writing of the issuer to pay a sum certain in money on demand to order or to bearer;
- (7) "Net worth" means excess of assets over liabilities as determined by generally accepted accounting principles;
- (8) "Person" means any individual, partnership, joint-stock association, trust, unincorporated association, or corporation; and
- (9) "Agent" means "subagents" of the licensee or other representatives who are authorized to act on behalf of the licensee in the sale of checks issued by the licensee, whether or not the subagent or representative was solicited by or deals directly with the licensee.

23-41-103. Exempt transactions.

- (a) This chapter shall not apply to the receipt of money by any incorporated telegraph company at any agency or office of the company for immediate transmission by telegraph.

- (b) This chapter shall not apply to the sale or issuance of checks by:
 - (1) The United States or any department or agency of the United States;
 - (2) Banks, credit unions, and savings and loan associations organized under the laws of this state or of the United States and insured by the United States or any agency thereof, and authorized to do business in this state.

23-41-104. Penalty - Enforcement.

- (a) Any person is guilty of a Class A misdemeanor who purposely:
 - (1) Violates any provision of this chapter, or any regulation adopted or order issued by the commissioner pursuant to this chapter with intent to defraud or deceive;
 - (2) Makes any false or misleading statement of a material fact in any application, statement, or report filed pursuant to this chapter;
 - (3) Omits to state any material fact necessary to provide the commissioner with information lawfully required by him; or
 - (4) Obstructs any lawful investigation, examination, entry, or access by the commissioner.
- (b) Each day during which a violation continues constitutes a separate offense.
- (c) The imposition of any fine or term of imprisonment pursuant to subsection (a) of this section:
 - (1) Is in addition to any suspension, revocation, or denial of a license which may result from the violation;
 - (2) Is not a bar to enforcement of this chapter by an injunction or other appropriate civil remedy.
- (d) For the purposes of venue for any civil or criminal action under this chapter, any violation of this chapter or of any rule, regulation, or order promulgated hereunder shall be considered to have been committed in any county:
 - (1) In which any act was performed in furtherance of the transaction which violated the chapter;
 - (2) In which the principal or an aider or abetter initiated or acted in furtherance of a course of conduct;

- (3) From which any violator gained control or possession of any proceeds of the violation or of any books, records, documents, or other material or objects which were used in furtherance of the violation; or
- (4) From which or into which the violator directed any postal, telephonic, electronic, or other communication in furtherance of the violation.
- (e) The commissioner may refer such evidence as is available concerning violations of this chapter or any rule or order hereunder to any appropriate prosecuting or law enforcement authority.
- (f) Nothing in this chapter limits the power of the state to punish any person for any conduct which constitutes a crime by statute or common law.

23-41-105. Rules and regulations.

The commissioner may make and enforce reasonable rules and regulations which are necessary for the enforcement and execution of this chapter.

23-41-106. Disposition of fees.

All license and investigation fees provided for in this chapter shall be retained by the commissioner during the fiscal year in which collected to pay for the costs of administering this chapter.

23-41-107. Notice.

Except as otherwise provided in this chapter, whenever the commissioner is required to give notice to any applicant or licensee, the notice requirement shall be complied with if, within the time fixed in § 23-41-122, the notice shall be enclosed in an envelope plainly addressed to the applicant or licensee, at the address set forth in the application or license, United States postage fully prepaid and deposited registered or certified in the United States mail.

23-41-108. Discontinuance of business.

- (a) Within five (5) days after a discontinuance of a licensee's business, he shall inform the commissioner of the discontinuance and shall surrender his license for cancellation.

- (b) If, as a result of any investigation, hearing, report, or examination, the commissioner finds that a licensee is insolvent or is conducting his business in such a manner as to render his further operations hazardous to the public, then the commissioner may, through an order served personally or by certified mail upon the licensee and any person known to the commissioner to possess funds of the licensee or its customers, require the immediate discontinuance of the disbursement of the funds and the cessation of the licensee's business. The order shall remain in effect until it is set aside, in whole or in part, by the commissioner or otherwise modified.
- (c)
 - (1) Whenever a licensee has refused or is unable to pay its obligations generally as they become due or whenever it appears to the commissioner that a licensee is in an unsafe or unsound condition, the commissioner, or the Attorney General representing the commissioner, may apply to the Chancery Court of Pulaski County or to the chancery court of any county in which the licensee is located for the appointment of a receiver for the licensee. The court may require the receiver to post a bond in such amount as may appear necessary to protect claimants of the licensee.
 - (2) The receiver, subject to the approval of the court, shall take possession of the books, records, and assets of the licensee and shall take such action with respect to employees, agents, or representatives of the licensee or such other action as may be necessary to conserve the assets of the licensee or ensure payment of instruments issued by the licensee pending further disposition of its business as provided by law. The receiver shall sue and defend, compromise, and settle all claims involving the licensee and exercise such powers and duties as may be necessary and consistent with the laws of this state applicable to the appointment of receivers.
 - (3) The receiver, from time to time, but in no event less frequently than once each calendar quarter, shall report to the court with respect to all acts and proceedings in connection with the receivership.

23-41-109. Judicial review.

All final administrative decisions of the commissioner under this chapter shall be subject to judicial review by the Circuit Court of Pulaski County on questions of law and appeal therefrom to the Supreme Court of Arkansas.

23-41-110. License required.

- (a) No person shall engage in the business of selling or issuing checks as a service or for a fee or other consideration without first securing a license to do so from the commissioner under this chapter.
- (b) A separate license is not required for an agent of a licensee, or an employee of such agent, who acts on behalf of the licensee in the sale or exchange of checks of which the licensee is the issuer unless the agent directly sells or delivers the licensee's checks over the counter to the public and, in the ordinary course of business, receives or has access to:
 - (1) The licensee's checks which, after payment, are returned through banking channels or otherwise for verification, reconciliation, or accounting with respect thereto; or
 - (2) Bank statements relating to checks so returned.
- (c) All money or credits received by an agent of a licensee from the sale or issuance of checks or for the purpose of transmission must be remitted to the licensee or deposited with a bank authorized to do business in this state for credit to an account of the licensee not later than the seventh business day following its receipt, however:

(As amended by Act 852 of 2003.)

- (1) The requirement shall not apply if an agent has placed on deposit with the licensee an amount not less than the average of the aggregate face amount of checks issued by the licensee and sold by the agent per day multiplied by the number of days in excess of seven (7) of the remittance period agreed to in a written agreement between the agent and licensee; and

(As amended by Act 852 of 2003.)

- (2) The requirement shall not apply to funds received from the sale of travelers' checks.

23-41-111. Application for license.

- (a) Every application for a license required under this chapter shall be in writing, signed by the applicant, in the form prescribed by the commissioner, and shall be submitted under oath.

(b) The application shall contain:

- (1) The name and principal business address of the applicant and, if incorporated, the date and place of its incorporation;
- (2) The name and address of each of the applicant's branch offices, subsidiaries, or affiliates, if any, which will be operated under the license;
- (3) The name and address, business and residential, of the proprietor or partners of the applicant or, if the applicant is a corporation or association, of each of the directors, trustees, and principal officers and of any stockholder who owns twenty percent (20%) or more of the applicant's stock;
- (4) A description of applicant's business and mode of operation;
- (5) The name and address of each agent and location in this state through which checks will be issued or sold pursuant to the license;
- (6) The name of every other state in which the applicant has applied for or has been granted a license or authorization to sell or issue or is selling or issuing checks; and
- (7) Other pertinent information as the commissioner may require.

(c) The application must be accompanied by:

- (1) A surety bond or securities as required by this chapter;
- (2) Evidence of the ability of the applicant to meet the requirements of this chapter, which requirements may include, among other information, an audited financial statement satisfactory to the commissioner, showing that the applicant's minimum net worth is equal to or in excess of five hundred thousand dollars (\$500,000);
- (3) A nonrefundable fee of one thousand five hundred dollars (\$1,500) for processing of the initial application. The applicant shall also pay such additional expenses incurred in the process of investigation as the commissioner deems necessary. However, such additional expenses shall not exceed the sum of one hundred dollars (\$100) per day for each examiner required for the investigation, plus travel expenses, if appropriate; and
- (4) A license fee in the amount specified in § 23-41-113, which fee may be prorated on the basis of the licensing year as provided by the commissioner.

- (d) As used in this section, "applicant" shall mean the person holding or seeking a license pursuant to this chapter, any director or officer of such person, or any person who controls such person.

23-41-112. Approval or denial of application.

- (a) The commissioner shall have the authority to investigate the financial condition, responsibility, business experience, background character, general fitness, and conduct of the applicant or licensee, and any partners, directors, trustees, officers, or employees for the purpose of determining whether a license should be issued to the applicant or whether a licensee has committed any act or omission that could constitute grounds for denial, suspension, or revocation of a license issued under this chapter.
- (b) (1) The commissioner shall approve an application for a license within ninety (90) days from the date of filing and shall approve a renewal of a license within thirty (30) days of filing. However, the commissioner may deny an application or a renewal if, after notice and opportunity for a hearing, the commissioner makes any of the following findings in a written order of denial:
 - (A) The granting of the license will be against the public interest;
 - (B) The applicant does not intend actively and in good faith to carry on as a business the transactions which would be permitted by the issuance of the license applied for;
 - (C) The applicant is not of good business reputation;
 - (D) The applicant is lacking in integrity. For purposes of this subdivision, the commissioner may find that an applicant is lacking in integrity if the applicant, or any person who controls the applicant, or any director or officer of the applicant, has been convicted of, or has pled guilty or nolo contendere to, any crime involving fraud or dishonesty. This shall not be deemed to constitute the only grounds upon which the commissioner may find that the applicant is lacking in integrity;
 - (E) The applicant or any person acting on behalf of the applicant has knowingly made or caused to be made in any application or report filed with the commissioner, or in any proceeding before the commissioner, any statement which was, at the time and in light of the circumstances under which it was made, false or misleading with respect to any material fact or has knowingly omitted to state in any such application, report, or proceeding any material fact which is required to be stated therein;

- (F) The applicant has previously engaged in any fraudulent practice or act or has conducted any business in an unlawful or dishonest manner;
 - (G) The applicant has shown incompetence or untrustworthiness in the conduct of any business or has, by commission of a wrongful act or practice in the course of business, exposed the public or those dealing with the applicant to the danger of loss;
 - (H) The applicant has knowingly failed to perform a duty expressly imposed upon the applicant by this chapter, or has knowingly committed an act expressly forbidden by this chapter;
 - (I) The applicant has been convicted of, or pled guilty to:
 - (i) A felony; or
 - (ii) Any crime involving moral turpitude;
 - (J) The applicant has knowingly aided or abetted any person in any act or omission which could constitute grounds for denial, suspension, or revocation of a license issued under this chapter;
 - (K) The applicant has knowingly permitted any person in its employ to violate any provision of this chapter;
 - (L) The applicant fails or refuses to pay any fee required herein.
- (2) As used in this section, "applicant" shall mean the person holding or seeking a license pursuant to this chapter, any director or officer of such person, or any person who controls such person.

23-41-113. License fees - Renewal.

- (a) Except as provided in § 23-41-111(c)(4), before any license is issued or renewed, the applicant or licensee shall pay an annual license fee in the amount of seven hundred fifty dollars (\$750).
- (b) A license issued pursuant to this chapter expires on December 31 of the year in which it is issued, and thereafter expires on December 31 of each year unless it is earlier surrendered, suspended, or revoked.

- (c) The license may be renewed from year to year upon payment of the fee required by this section and approval of the commissioner, provided that the licensee files an application for renewal stating any changes from the original application of the licensee at least thirty (30) days before the expiration of his current license and provided that the applicant continues to comply with all provisions of this chapter and all regulations and rules hereunder.

23-41-114. Surety bond.

- (a) Each applicant shall submit prior to issuance of a license, and shall maintain in force at all times during which he is licensed, a surety bond payable to the commissioner for the benefit of any holder of any outstanding check sold or issued by the licensee or its agents in the principal sum of two hundred fifty thousand dollars (\$250,000).
- (b)
 - (1) The bond shall:
 - (A) Be in a form satisfactory to the commissioner;
 - (B) Be issued by a bonding company authorized to do business in this state; and
 - (C) Secure the faithful performance of the obligation of the applicant and its agents with respect to the receipt of money and the issuance and sale of checks in connection thereto.
 - (2) The aggregate liability of the surety shall in no event exceed the principal sum of the bond.
- (c)
 - (1) In the event of the rendering of a judgment against a licensee in an amount in excess of ten percent (10%) of the net worth of the licensee, the licensee shall, within ten (10) days after the notice of entry of such judgment against it by any creditor or claimant arising out of the business regulated by this chapter, give notice thereof to the commissioner by registered or certified mail with details sufficient to identify the action or judgment.
 - (2) The surety or licensee shall, within ten (10) days after it pays any claim or judgment to such a creditor or claimant, give notice thereof to the commissioner by registered or certified mail with details sufficient to identify the creditor or claimant and the claim or judgment so paid.

- (d) Whenever the principal sum of the bond is reduced by recoveries against it or payments thereon, the licensee shall furnish:
 - (1) A new or additional bond so that the total or aggregate principal sum of the bonds equals the sum required under subsection (a) of this section; or
 - (2) An endorsement, duly executed by the surety reinstating the bond to the required principal sum.
- (e) The liability of the surety on the bond to any such creditor or claimant shall not be affected by any misrepresentation, breach of warranty, failure to pay a premium, or other act or omission of the licensee or by any insolvency or bankruptcy of the licensee.
- (f) The liability of the surety shall continue as to all transactions entered into in good faith by the creditors and claimants with the licensee's agents within thirty (30) days after the earlier of:
 - (1) The licensee's death or the dissolution or liquidation of his business; or
 - (2) The termination of the bond.
- (g) Whenever the commissioner determines that the protection of the public so requires, he may order that an increase be made in the principal sum of the original bond of any licensee. However, the increase shall not exceed two hundred fifty thousand dollars (\$250,000).
- (h) Neither a licensee or his surety may cancel or alter such a bond except after notice to the commissioner by registered or certified mail. The cancellation or alteration is not effective until thirty (30) days after receipt of the notice by the commissioner. A cancellation or alteration does not affect any liability incurred or accrued on the bond before the expiration of the thirty-day period set forth in subsection (f) of this section.

23-41-115. Deposit of securities in lieu of bond.

- (a) In lieu of any bond required under this chapter, the licensee may deposit with the commissioner securities with a market value equal to the amount of any such bond.

- (b) The securities shall consist of:
 - (1) General obligations of, or obligations fully guaranteed by, the United States or of any agency or instrumentality of or corporation wholly owned by the United States directly or indirectly; or
 - (2) Direct general obligations of the State of Arkansas or of any county, city, town, school district, or other political subdivision or municipal corporation of the State of Arkansas.
- (c) The securities shall be held by the commissioner to secure the same obligation as would any bond required by this chapter.
- (d) The securities so deposited may, with the approval of the commissioner, be exchanged from time to time for other securities receivable as aforesaid. All the securities shall be subject to sale and transfer and to the disposal of the proceeds by the commissioner only on the order of a court of competent jurisdiction.
- (e) So long as the licensee depositing shall continue solvent, the licensee shall be permitted to receive the interest or dividends on the deposit of securities.
- (f) The commissioner may provide for custody of the securities by any qualified trust company or bank located in the State of Arkansas or by any Federal Reserve bank. The compensation, if any, of the custodian for acting as such under this section shall be paid by the depositing licensee.

23-41-116. [Repealed.]

23-41-117. Minimum net worth - Investments - Proceeds of sale.

- (a) Each licensee under this chapter shall at all times maintain a minimum net worth of at least five hundred thousand dollars (\$500,000).
- (b) (1) Each licensee shall at all times maintain permissible investments having a value, computed in accordance with generally accepted accounting principles, equal to or greater than the aggregate liabilities of the licensee with respect to checks sold or issued and outstanding and money or credits received for transmission.

- (2) As used in this section, "permissible investment" shall mean:
- (A) Cash;
 - (B) Certificates of deposit or other debt instruments of a financial institution, which debt instruments are insured by an agency of the federal government and which are readily marketable;
 - (C) Bills of exchange or time drafts drawn on and accepted by a commercial bank, otherwise known as banker's acceptances, which are eligible for purchase by member banks of the federal reserve system;
 - (D) Commercial paper of prime quality as defined by a nationally recognized organization that rates such paper;
 - (E) Investment securities that are obligations of the United States or any of its agencies or instrumentalities, or obligations which are guaranteed fully as to principal and interest by the United States or any obligations of any state, municipality, or of any political subdivision of a state or municipality;
 - (F) Shares in a money market fund or interest-bearing bills, notes, or bonds;
 - (G) Any common or preferred stock traded on a national securities exchange. Investments in stock under this subdivision shall not exceed ten percent (10%) of the amount of permissible investments held by a licensee or twenty percent (20%) of the net worth of the licensee, whichever is less;
 - (H) Any other investments approved by the commissioner.
- (c) (1) All funds collected or received from the sale of checks by an agent shall be impressed with a trust in favor of such licensee in an amount equal to the amount of the proceeds due the licensee and shall not be commingled with other funds of the agent.

- (2) No proceeds received by any agent or agents of a licensee from the sale of any check issued by such licensee, while held by the agent, nor any property impressed with a trust pursuant to this section shall be subject to attachment, levy of execution, or sequestration by order of any court, except for the benefit of the licensee. In the event that a licensee's license is revoked by the commissioner, all sales proceeds then held in trust by agents of that licensee shall be deemed to have been assigned to the commissioner.

23-41-118. Conduct of business - Location - Agents.

Each licensee may conduct his business at those locations within this state, and through or by means of those employees, agents, subagents, or representatives which he may from time to time designate and appoint.

23-41-119. Semiannual reports.

- (a) Each licensee, on or before July 31 and January 31 of each year, shall file a report with the commissioner for the preceding one-half ($\frac{1}{2}$) calendar year.
- (b)
 - (1) The report shall, if the commissioner requests, list the name and address of each agent authorized by the licensee as of the close of business on the last day of the one-half ($\frac{1}{2}$) calendar year preceding the report to engage in the sale of checks of which the licensee is the issuer.
 - (2) The commissioner may require that the report include the annual dollar amount of checks sold by the licensee in Arkansas during the preceding one-half ($\frac{1}{2}$) calendar year or the average amount of outstanding liabilities of the licensee from business for which he is licensed, or both amounts.
- (c) A filing fee of twenty-five dollars (\$25.00) for each report shall be paid at the time of filing.

23-41-120. Annual financial statement - Examinations.

- (a) Each licensee shall submit to the commissioner on an annual basis an audited financial statement covering the licensee's most recent fiscal year ended showing the financial condition of the licensee or owners thereof within ninety (90) days from the end of the licensee's fiscal year. The statement shall be in a form and prepared by an accountant acceptable to the commissioner. A filing fee of twenty-five dollars (\$25.00) shall accompany the statement at the time of filing.

- (b) (1) In addition to any other powers or authority conferred by this chapter, and at such times as he may deem proper, the commissioner shall have the authority to examine the books and records of any licensee and any other documents relevant to the conduct of licensee's business to determine whether such business is being conducted in compliance with this chapter.
- (2) For purposes of these examinations, the commissioner may enter upon any of the business premises of a licensee or his agents during normal business hours and request access to the relevant documents. Any obstruction or denial of such entry or access is a violation of this chapter.
- (c) The commissioner shall charge and collect from the licensee a reasonable fee in an amount sufficient to cover the cost of any examination. However, the fee shall not exceed the sum of one hundred dollars (\$100) per day for each examiner required for the examination, plus travel expenses when necessary or appropriate, up to a maximum of a total of one thousand dollars (\$1,000) per year.

23-41-121. Investigations - Delegation of authority.

- (a) The commissioner may conduct any necessary investigations and hearings to determine whether any licensee or other person has violated any of the provisions of this chapter or whether any licensee has conducted himself in a manner which requires the suspension, revocation, or denial of renewal of his license.
- (b) For the purposes of this chapter, the commissioner has power to require by subpoena the attendance and testimony of witnesses and the production of all documentary evidence relating to any matter under hearing or investigation pursuant to this chapter and shall issue subpoenas at the request of an interested party.
- (c) In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Chancery Court of Pulaski County, upon application by the commissioner, may issue to the person an order requiring him to appear before the commissioner, or any employee of the State Securities Department designated by him, and there to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court shall be punished by the court as a contempt of court.
- (d) The commissioner may require any licensee to submit such reports concerning his business as the commissioner deems necessary for the enforcement of this chapter.

- (e) Except as provided in § 23-41-104(e), all reports of investigations and examinations and other reports rendered pursuant to this section and all correspondence, memoranda, or information relating to or arising therefrom, including any authenticated copies thereof in the possession of any licensee or the commissioner, are confidential communications, are not subject to any subpoena, and shall not be made public unless the commissioner determines that justice and the public advantage will be served by their publication. This subsection does not preclude any party to an administrative or judicial proceeding from introducing into evidence any information or document otherwise available or admissible.
- (f) The commissioner, subject to such restrictions as he in his discretion deems appropriate, may delegate to any appropriate staff member or other employee of the State Securities Department the exercise or discharge in the commissioner's name of any power, duty, or function, whether ministerial, discretionary, or of whatever character, vested by this chapter in the commissioner.

23-41-122. Suspension, revocation, or surrender of license.

- (a) The commissioner may, upon fifteen (15) days' notice to the licensee, stating the contemplated action and in general the grounds therefor, hold a hearing at which the licensee shall have a reasonable opportunity to be heard for the purpose of determining whether a licensee should be suspended or revoked for failure of the licensee to comply with the provisions of this chapter and the regulations hereunder.
- (b) At the conclusion of the hearing, the commissioner shall enter an order either dismissing the charges or suspending or revoking the license. The suspension or revocation shall be effective from the date of entry of the order by the commissioner or such other time as set forth therein.
- (c) The grounds for suspension or revocation of a license are:
 - (1) Any act or omission which would constitute grounds for denial of a license under § 23-41-112(b);
 - (2) Failure of the licensee to maintain in effect the required bond or securities;
 - (3) A finding that the licensee is conducting its business in an unsafe or unsound manner;
 - (4) A finding that the licensee is insolvent;

- (5) Violation of any provision of this chapter, any rule promulgated hereunder, or any order issued by the commissioner pursuant to this chapter; or
 - (6) The existence of any fact or condition which, had it existed at the time of the original application for a license, would have constituted grounds for denying the application for a license.
- (d)
- (1) If the commissioner finds that it is necessary for the protection of the interests of purchasers or holders of checks issued by the licensee or for the protection of the public interest that he immediately suspend or revoke the license of such licensee, then the commissioner may issue an order summarily suspending or revoking the license of the licensee.
 - (2) Within thirty (30) days after an order is issued pursuant to this subsection, any licensee to whom the order is issued may file a written request with the commissioner for a hearing on the order.
 - (3) The commissioner shall commence the hearing within fifteen (15) business days after the request is made.
 - (4) Within thirty (30) days after the hearing, the commissioner shall affirm, modify, or vacate the order.
- (e) A licensee may surrender any license by delivering to the commissioner written notice that he surrenders the license, but the surrender shall not affect the licensee's civil or criminal liability or liability on any bond or entitle the licensee to a return of any part of any license fee.
- (f) If a license is surrendered, suspended, or revoked, the licensee shall immediately deposit in an account in the name of the commissioner an amount which is sufficient to make the total funds in the account equal to all outstanding checks sold or issued in the State of Arkansas and money or credits received but not transmitted.